

**MONTGOMERY COUNTY, STATE OF MARYLAND  
COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

**Oak Grove Homeowners Association,**  
Complainant,

v.

Case No. 72-06  
April 4, 2008

**Louise Ford,**  
Respondent

**DECISION AND ORDER**

The above-captioned case came before the Hearing Panel of the Montgomery County Commission on Common Ownership Communities (the “Commission”) for review and decision pursuant to Chapter 10B of the Montgomery County Code (2004, as amended). The Hearing Panel has considered the evidence of record and finds, determines and orders as follows:

**Procedural Background**

On October 31, 2006, the Oak Grove Homeowners Association (“Oak Grove” or “the Complainant”) filed a dispute with the Commission alleging that Louise Ford (“Ford” or “the Respondent”) was in violation of the governing documents and architectural rules of the community by installing an unapproved fence. Complainant alleged that the picket fence installed by Respondent was installed by Respondent prior to Respondent submitting an ACC request. Complainant alleges that Respondent subsequently submitted an ACC request to Complainant for the picket fence and the ACC request was denied. Complainant alleges that its governing documents do not permit the style of fence installed by Respondent. Complainant alleged that Respondent failed to remove the unapproved fence. Complainant requested the Commission to order Respondent to correct the architectural violation by requiring Respondent to remove the fence.

On December 19, Respondent filed her Answer to the Complaint with the Commission. Respondent’s Answer did not admit nor deny the allegations set forth in the Complaint but contained a request for mediation. The parties attended mediation in or about February 2007 but were unable to resolve the dispute.

In or about April 2007, Respondent subsequently proposed that she wished to follow the procedures set forth in Oak Grove’s Bylaws to call a special meeting of the members to undertake a vote on changing the fence rules. Respondent proposed to have the special meeting by no later than June 1, 2007, and proposed to remove the fence

within two weeks of the vote if the proposal to change the fence rule did not pass. The above-referenced proposal was transmitted to the Complainant via letter dated April 18, 2007 from Commission staff-person Peter Drymalski. By letter dated May 22, 2007, Complainant agreed to hold the special meeting of the membership to vote upon whether to amend the Oak Grove Declaration if Respondent obtained the requisite number of signatures pursuant to Complainant's Bylaws, Article III, Section 2, to call such special meeting by August 1, 2007.

Respondent successfully obtained the requisite number of signatures to call the special meeting and forwarded that information to Complainant on July 31, 2007. Complainant held the special meeting on September 18, 2007 at Respondent's request to give Respondent an opportunity to gather the 90% affirmative vote required by the Declaration in order to change the fence provision in the Declaration. Respondent was not successful in obtaining the 90% affirmative vote required to amend the fence provision of the Declaration. Respondent failed to remove the fence thereafter, and by letter dated October 1, 2007, Complainant formally requested the Commission to set a date for public hearing in this case.

On November 7, 2007, the Commission accepted jurisdiction of this dispute, and public hearing was scheduled for January 30, 2007. Complainant appeared at the hearing, represented by counsel, John F. McCabe, Esq. Respondent did not appear at the hearing, but sent a "representative" to appear on her behalf. The Panel determined that Respondent's "representative" was not an attorney, and explained to Respondent's "representative" that she could not act on behalf of Respondent at the hearing but that she was welcome to observe the proceedings, which were conducted as an ex-parte hearing. Hearing Panelist Robert Gramzinski was unable to attend the hearing. The Complainant was given the option of having only two panelists, Panel Chair Corinne G. Rosen, Esq., and Panelist Andrew Oxendine, decide the case, or having the Commission also provide a copy of the hearing transcript and record to Mr. Gramzinski to have three panelists decide the case. Complainant chose to proceed with the first option of having Panel Chair Rosen and Panelist Oxendine hear and decide this case.

### **Findings of Fact**

1. Oak Grove Homeowners Association is a common ownership community whose Declaration, Bylaws, and Articles of Incorporation are filed in the Land Records of Montgomery County, Maryland at Liber 11067, Folio 446. Pursuant to those governing documents, Oak Grove has adopted Architectural Control Guidelines dated November 19, 1997, revised November 20, 2007.
2. Louise Ford is the owner of a single family residence located at 19303 Bakers Run Court, Brookeville, Maryland 20833, and this unit is part of the Oak Grove Homeowners Association is subject to its governing documents, rules, and regulations.
3. Complainant's Declaration, Article VI, Architectural Control, Section 1.

provides in pertinent part that “No...fence....shall be commenced, erected or maintained upon the Property...until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography, and as to compliance with the provisions of this Declaration, by an Architectural Committee composed of three (3) or more representatives appointed by the Board...Until an Architectural Committee is established, the Board of Directors shall constitute the Committee.”

4. Complainant’s Declaration, Article VI, Architectural Control, Section 17. provides as follows: “The Architectural Committee shall be bound by at least the following in connection with the approval of any application for the construction of a fence: All fences shall be wood or white vinyl split rail or three rail “farm fencing” (C-Exhibit 1).
5. In or about the fall of year 2005, Respondent erected a fence upon her Property without submitting an application to or otherwise obtaining the prior approval of Complainant. The fence was a picket fence. Complainant cited Respondent for erecting the picket fence in October 2005. Respondent submitted a post-construction application for the picket fence in December 2005. In January 2005, Complainant sent a disapproval letter to Respondent regarding her post-construction application. The post-construction fence application was disapproved because the style of fence erected by Respondent (picket fence) was not permitted pursuant to Article VI, Section 17 of the Declaration. In February 2006, Complainant sent a follow-up letter to Respondent directing her to either appeal to the Board or remove the picket fence or replace the picket fence with a fence in a style approved by the architectural committee. In April 2006, Complainant sent another letter to Respondent asking her if she wanted a hearing before the Board.
6. In May 2006, Respondent appeared before the Board and stated that the fence was constructed prior to her obtaining approval, admitting that the fence did not meet the Complainant’s architectural requirements, presented material indicating that her neighbors did not object to the fence, and stating that the fence she erected was necessary to keep her dog (a pit-bull like breed) confined to the yard, and that the dog was a companion to her son who was injured in an automobile accident several years prior.
7. In June 2006, Complainant denied Respondent’s appeal of the disapproval of the picket fence based upon the language of Article VI, Section 17 of the Declaration. Respondent was given 120 days to remove the fence.
8. In September 2006, Complainant mailed a letter to Respondent reminding her of the deadline to remove the fence (October 1, 2006). Respondent failed to remove the fence and Complainant filed this case with the Commission.

9. During the hearing, Complainant submitted photographs of Respondent's Fence (C- Exhibit 3), and photographs of split rail and three rail fences at other lots in Oak Grove (C-Exhibit 2). The photographs of Respondent's fence clearly show that it is not a split rail or three rail fence as provided for in Declaration, Article VI, Section 17.
10. Complainant's witnesses testified that there are 197 homes at Oak Grove, and that, other than Respondent's fence, there are three (3) fences which do not conform to Declaration, Article VI, Section 17. Two of the non-conforming fences are "stockade" fences built at houses with swimming pools over ten (10) years ago. Complainant's witnesses testified that these "stockade" fences were likely required by County Code at the time of construction because of the swimming pools. Complainant's witnesses also testified that one (1) non-conforming fence (fence was 6' high) was approved by the Board as a reasonable accommodation in accordance with the requirements of the Americans With Disabilities Act because of a medical condition of a family member residing at that house.
11. Complainant's witnesses also testified that homeowners other than Respondent owned dogs, and that wire mesh could be placed on split rail or three rail fences to prevent a dog from escaping from a yard. The photographs of other conforming fences in Oak Grove (C-Exhibit 3) show that Oak Grove permits the use of wire mesh on conforming fences.
12. Based on the testimony and evidence in the record, the Panel finds that Complainant made good faith efforts over a period of over one year to persuade Respondent to correct the violation, including but not limited to providing Respondent with the opportunity to undertake a membership vote at a special meeting to afford Respondent the opportunity to persuade the members of Oak Grove to amend Declaration, Article VI, Section 17. The special meeting of the membership was held for that purpose in September 2006, and Respondent was unsuccessful in obtaining the requisite number of membership votes (90%) to amend the Declaration.
13. Complainant was compelled to file and proceed with this action because Respondent failed to remove the non-conforming picket fence from her property, despite agreeing to do so if the proposed amendment to Declaration, Article VI, Section 17., did not carry.

### **Conclusions of Law**

1. Respondent violated the governing documents of her community by

erecting a fence on her property without obtaining prior approval as required by Declaration, Article VI., Section 1.

2. Respondent violated the governing documents of her community by erecting a picket fence on her property which did not conform to the specifications of Declaration, Article VI., Section 17., which clearly and unambiguously permits only split rail and three rail fences.
3. No federal, state, or county law, regulation, or statute provides a legal basis under which Respondent can require Complainant to approve her non-conforming picket fence.

### **Order**

The Hearing Panel therefore ORDERS:

1. That within 60 days after the date of this Order, the Respondent, Louise Ford, must remove the non-conforming picket fence from her property.
2. Any party aggrieved by this Decision may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days after the date of this Decision pursuant to the Maryland Rules of Procedure governing administrative appeals.

Commissioner Oxendine concurs.

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Corinne G. Rosen, Panel Chair

April 4, 2008

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Date